

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayer  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition for Approval of a  
City Requested Facilities Surcharge Rider and  
Miscellaneous Tariff Changes

ISSUE DATE: November 6, 2002

DOCKET NO. E-002/M-99-799

ORDER APPROVING SUPPLEMENTAL  
REVISED COMPLIANCE FILING AS  
EDITED

**PROCEDURAL HISTORY**

On September 21, 2001, the Commission issued its ORDER APPROVING XCEL'S CITY REQUESTED FACILITIES SURCHARGE RIDER WITH MODIFICATIONS AND REQUIRING COMPLIANCE FILING. In this Order the Commission, among other things, directed Xcel to file the following information as a compliance filing within 60 days of the Order:

- (1) a description of the procedures Xcel will use (including any forms that will be used) to determine whether a facility or installation is standard or special;
- (2) an explanation of how Xcel will calculate the cost differences between standard and special facilities;
- (3) tariff language that incorporates these methods of determining the differences between standard and special facilities. This language should describe the procedures Xcel will use to determine whether a facility is standard or special; and
- (4) an appeal process within the tariff, as set forth in the Order.

On November 20, 2001, Xcel filed its first compliance filing. The Company asked to withdraw this filing on December 19, 2001 and filed its second compliance filing on December 31, 2001.

On February 1, 2002, the City of Minneapolis filed comments.

On February 4, 2002, the Suburban Rate Authority (SRA) and the Minnesota Department of Commerce (the Department) filed comments. The Department recommended rejection of the compliance filing.

On February 14, 2002, the Company asked to withdraw this filing and filed its third compliance filing (the Supplemental Revised Compliance Filing) on June 11, 2002.

On July 12, 2002, the City of Minneapolis, the SRA, and the Department filed initial comments on Xcel's June 11, 2002 compliance filing.

On August 2, 2002, Xcel and the City of Minneapolis filed reply comments and the SRA filed reply comments on August 5, 2002.

The Commission met to consider this matter on September 12, 2002.

## **FINDINGS AND CONCLUSIONS**

### **I. BACKGROUND**

On September 21, 2001, following a proceeding participated in by numerous parties including the City of Minneapolis and the Suburban Rate Authority (SRA), the Commission issued its ORDER APPROVING XCEL'S CITY REQUESTED FACILITIES SURCHARGE RIDER WITH MODIFICATIONS AND REQUIRING COMPLIANCE FILING. In that Order, the Commission recognized that a city has a right to order Xcel to construct underground distribution facilities when acting within its police power and that Xcel has a right to seek recovery of its incremental costs associated with any such orders. The Commission found that it was reasonable, equitable, and consistent with past practice for Xcel to recover these costs from the ratepayers whose municipalities required them, instead of from the general body of ratepayers.

Xcel's proposal, which the Commission approved, provided for a surcharge to the residents of a city that orders Xcel to construct underground distribution facilities, if the city declines to pay the incremental costs. The approved rider was limited in scope, allowing an automatic surcharge to city residents only where a city orders undergrounding of distribution facilities. To recover the costs of other types of special facilities, Xcel would be required to file a separate petition with the Commission to seek reimbursement.

The Commission also agreed with the Department and other parties that the definition of "special facilities" needed to be clarified. To do so, the Commission required Xcel to submit a compliance filing describing the procedures Xcel will use to determine whether an installation is standard or special, explaining its calculations of cost differences between standard or special facilities and

submitting tariff language that incorporates these items. In addition, Xcel was directed to establish within the tariff an appeal process, as specifically described by the SRA in a prior filing and set forth in the Commission's Order.

## **II. XCEL'S COMPLIANCE FILING**

Xcel filed, withdrew, and refiled its compliance filing several times in response to parties' comments and made its final revised filing on June 11, 2002. In its June 11 filing (Supplemental Revised Compliance and Exhibits), Xcel included the compliance tariff sheets, a red-lined version of the tariff sheets, a brief discussion of changes made since a compliance filing was first submitted (November 20, 2001) and the Company's position on the issues that remained in dispute.

In addition, the Company provided Exhibits including its worksheets used internally at Xcel for calculating the cost of special facilities and for which no Commission approval is requested. The Company filing also included copies of the letters, forms, and attachments that the Company has developed to provide to cities that have ordered or requested a facilities change. The Company stated that this information will differ slightly depending on whether the special facilities are requested by a city acting under its police powers or whether they are requested by the city but not under its police powers.

## **III. THE DEPARTMENT**

The Department stated that the changes Xcel has made to its proposed tariff, City Requested Facilities Surcharge (CRFS) Rider and supporting letters, forms and worksheets have addressed the Department's earlier concerns.

The Department recommended several non-substantive editing changes to the Company's tariff, Rider and supporting documents and recommended that the Commission find that Xcel's supplemental revised compliance filing, as amended by the Department's edits, adequately complies with the Commission's September 21, 2001 Order.

## **IV. SUBURBAN RATE AUTHORITY**

In its final written comments, the SRA raised two substantive issues. First, the SRA indicated that the Commission should retain the authority to review Xcel's determination whether facilities are "special" or "standard" within the meaning of its tariff. Second, the SRA proposed language to require Xcel to petition the Commission for surcharge authority in all instances except in circumstances specifically addressed in the *City of Oakdale* decision.<sup>1</sup>

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<sup>1</sup> See the Court of Appeals' February 2, 1999 decision in *Northern States Power Company v. City of Oakdale*, 588 N.W.2d 534 (Minn. Ct. App. 1999).

## **V. CITY OF MINNEAPOLIS**

The City of Minneapolis made five points.

- First, it argued that cities do not have the statutory authority to prepay for the special facilities resulting from a request by a city.
- Second, it asserted that Attachment C of the compliance filing should provide for situations in which Xcel is choosing to work on the line in the winter due to workload or other reasons.
- Third, the City stated that Xcel should be clear on Attachment D that it is responsible for the full restoration of the right-of-way (ROW) as required by the ROW rules.
- Fourth, the City maintained that the definition of standard facilities remains so vague it is impossible to tell which facilities are standard under the definition and which ones are not.
- Finally, Xcel's proposed language on some of its scoping estimates forms and letters are disingenuous and should be changed from "required" to recover excess expenditures to "permitted" or some other more neutral language.

## **VI. COMMISSION ANALYSIS AND ACTION**

Xcel's filing delineates a multi-step communications exchange process which begins when a city expresses interest in changing or adding electric facilities that may or may not be considered standard configuration. The Commission agrees with the Department that the Company's provisions, including the definition of "standard facilities" which the City of Minneapolis objected to, are reasonable and that the delineated process, along with the letters, forms, and worksheets comply with the Commission's Order. The Commission will approve the Company's filing, as non-substantively but reasonably edited by the Department.

The issue raised by the SRA regarding the scope of surcharges that should require Commission review and approval prior to implementation was properly addressed and decided in the September 21, 2001 Order and the Commission finds no need to revisit that issue at this time.

The City of Minneapolis' and the SRA's disagreement over whether cities have statutory authority to pre-pay incremental facilities costs need not be resolved by the Commission since the issue does not affect the adequacy of Xcel's compliance filing. Xcel's tariff merely provides pre-payment by the city as an alternative to a surcharge against the city's residents. If the City of Minneapolis does not believe it has authority to use the pre-pay option, it will simply choose the resident surcharge mechanism.

Regarding SRA's concern that the Commission retain review authority over Xcel's determinations of what facilities are special, the Commission clarifies that nothing in the approved compliance filing divests the Commission of that authority. Any party objecting to Xcel's determination on that subject may file a complaint with the Commission and have the Company's determination reviewed for reasonableness.

Finally, the Commission notes that the approved rider limits or caps the surcharge at what is a reasonable rate impact on an individual customer due to city-initiated facilities changes (ordered or requested) that result in additional cost. As a result, projects whose costs can be recovered within the limits established by the tariff do not require individual Commission review. Projects that cannot be recovered within the limits established in the Rider are required to be reviewed by the Commission.

### **ORDER**

1. Xcel's June 11, 2002 supplemental revised compliance filing, as edited by the Department, is approved.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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